

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Anthony C. Ruff,
Petitioner,

vs.

Case No. 1:04cv014
(Weber, J.; Black, M.J.)

Wanza Jackson,
Respondent.

ORDER

Petitioner, an inmate in state custody at the Lebanon Correctional Institute in Lebanon, Ohio, has filed a *pro se* petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. (Doc. 1). This matter is before the Court for a ruling on petitioner's motions for evidentiary hearing (Doc. 8) and to strike respondent's answer to Ground Five of the petition as untimely (Doc. 17).

Petitioner's motion for evidentiary hearing (Doc. 8) is DENIED. It appears at this juncture in the proceedings that petitioner's claims for relief may be resolved based on the record presented.

Petitioner also seeks by motion to strike respondent's answer to Ground Five of the petition as untimely. (Doc. 17). The respondent was directed to answer, within forty (40) days, Ground Five of the petition by this Court's February 10, 2005 Order. (Doc. 10). Respondent filed its answer on March 21, 2005. (Doc. 15). As March 21, 2005 was within the forty (40) day filing deadline ordered by the Court, respondent's answer is timely.

Petitioner's contention that this Court's consideration of respondent's motion to dismiss (Doc. 6) prior to ordering an answer to the petition represents undue leniency toward the respondent and thus is prejudicial toward the petitioner is without merit. Rule 4 of the Rules Governing § 2254 Cases in the District Courts, 28 U.S.C. foll. § 2254, provides that the district court has within its power the ability to allow the respondent to file a motion in response to a petition for writ of habeas corpus. This Court's careful and reasoned consideration of respondent's motion to dismiss (Doc. 6) was proper and did not result in prejudice toward the petitioner.

Accordingly, petitioner's motion to strike respondent's answer to Ground Five of the petition as untimely (Doc. 17) is DENIED.

IT IS SO ORDERED.

Date: 6/29/05

s/Timothy S. Black
Timothy S. Black
United States Magistrate Judge

